IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6516 OF 2003

Uma Ramesh Jape & Anr. .. Petitioners

Vs.

Dhondiba Dnyanoba Bhadekar & Ors...Respondents

Mr.S.S.Patwardhan for the petitioners

Mr.P.D.Dalvi for respondent no.1 and 2

Mr.V.M.Mali for respondent no.3 and 4

CORAM : S.U.KAMDAR, J
DATED : 9TH DECEMBER, 2005

P.C.:

1. The present petition challenges the order dt.8.8.03 interalia granting condonation of delay of 5 days in filing the Election Petition. I have perused the order. The two grounds which are formulated by the Trial Court are that whether under section 5 of the Indian Limitation Act the court has power to condone the delay or not. Reliance has been placed on the Judgement of the Apex Court in the case of Shaik Saidulu alias Saida v. Chukka Yesu Ratnam and others reported in AIR 2002 SC 749 wherein the court has held that there

is a power to grant condonation of delay under section 5 of the Indian Limitation Act.

2. In so far as facts of this case is concerned, there is a delay in filing the petition of 5 days. The contention raised is that though notification was issued on 10.1.02 declaring the election he has got the copy of notification only on 25.1.02 and immediately thereafter on the very same day he has filed the petition. On the other hand the learned counsel for the petitioner has pointed out that explanation is not correct though the affidavit filed by the officer itself says that he has applied for the notification only on 25.1.02 and on the same day a copy of the notification was issued to him. My attention is also drawn to the averments made in an application for condonation of delay in which he has stated that till 25.1.02 he was not given a copy of notification.

3. However I am of the opinion that since the delay is only of 5 days and keeping in mind the ratio of the Judgement in the case of Shaik Saidulu alias Saida v. Chukka Yesu Ratnam and others

(Supra) particularly para 13 thereof wherein the apex court has held that Election Petition must be heard on merits and cannot be dismissed merely on technicalities. I am of the opinion that delay can be condoned by taking lenient view of the matter. In that view of the matter, I do not find it necessary to interfere with the impugned order passed by the Trial Court. However, keeping in mind the aforesaid facts and circumstances, I am of the opinion that respondent no.1 and 2 should be directed to pay cost to the petitioner in the present proceedings. The learned counsel for the respondent no.1 and 2 states that delay can be condoned if necessary on imposition of cost. I accordingly, direct respondent no.1. and 2 to pay cost quantified at Rs.10,000 to the petitioner in the application for condonation of delay and also in this petition. Cost to be paid within two weeks from today. Petition disposed of accordingly. No order as to costs.